

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD DAVID PICKETT,

Defendant-Appellant.

UNPUBLISHED

July 27, 2010

No. 292016

Jackson Circuit Court

LC No. 08-005123-FH

Before: FORT Hood, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals by right the sentence imposed on his bench trial conviction of failure to stop at the scene of an accident resulting in serious impairment or death, MCL 257.617. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to four to 20 years in prison. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On August 23, 2008, defendant was driving his motorcycle with his fiancée Bonnie Arnett as a passenger.¹ According to defendant, he and Arnett had gone to Adrian and were returning to Jackson County when they were in an accident that occurred when an animal ran into the road. Defendant maintained that he had no other recollection of the accident, however, the first person apparently on the scene, Ehab El-Sharkawy, testified that as he exited US 127, he noticed a body and a motorcycle in the road. He stopped the car, got out, and called 911. He testified that he saw a man lying on the road, and then noticed a woman who seemed to have been more seriously injured. El-Sharkawy approached the man, who started to move, and told him the paramedics were coming. However, the man, who was upset, was trying to go to the woman, and saying her name, while trying to shake her, and El-Sharkawy told him not to because she was seriously injured. The man also seemed to be panicking and talking about a deer jumping out. Later, as El-Sharkawy and others focused on the woman, he heard the man ask someone to help him pick up the motorcycle and later saw the man drive away.

¹ Arnett died as a result of the accident.

Walter Culver testified that he also was present on the scene after the accident. He saw defendant lying face down in the road, and saw the driver of the first car on the telephone. Defendant got to his feet, walked over to the motorcycle and said, "I hit a deer." Defendant asked for assistance in righting his motorcycle, and Culver told defendant he should leave it. Defendant and Culver went over to the woman, who was also lying in the road. Defendant bent over and stated, "Get up Bonnie, we have to go." As defendant bent over her, Culver told him to leave her alone. The two returned to the motorcycle. Culver's wife, who was in the car with him, came over and Culver tried to calm her down and walk her back to the car. As Culver returned to the scene, he saw defendant drive off.

According to defendant's mother, Janet Trowbridge, defendant arrived at her home on August 24, 2008, at around 6 a.m., having spent the night at his sister's home on her porch. He rang the doorbell, and when Trowbridge answered he was standing there in his slippers and said, "Mom, help me." He appeared to be in pain and having difficulty breathing. She asked him what was wrong and he said he needed a place to lie down. Trowbridge put defendant in a guest bedroom to sleep, and left for church, returning from church early, she woke defendant up, asked him what had happened, and defendant told her that he had been in an accident on the motorcycle. She decided to take him to the hospital. As they drove, she asked him questions about the accident. She told him that they should call Bonnie. Defendant looked at her "blankly", hesitated, and said, "She's there." Trowbridge asked defendant whether Bonnie was with him in the accident and he responded that she was. When Trowbridge asked where she was now, defendant replied that he did not know. Trowbridge stated that she thought he appeared disoriented.

After defendant was admitted to the hospital, Jackson Sheriff Deputy James Moore interviewed him. After being advised of his rights and signing a waiver, Moore told defendant that he was conducting an investigation, and defendant stated that he was involved in the accident. He admitted that he left Arnett at the scene. However, defendant told Moore that he left to get his car and to get help to take Arnett to the hospital. Moore testified that defendant told him that he had gone home and returned to the scene in his car. However, he became very scared when he saw the lights from the emergency vehicles, so he did not return to the scene. Instead, defendant went to his sister's house, and then to his mother's house. Following a bench trial, defendant was convicted and sentenced as stated above. He appeals challenging his sentence as disproportionate.

A conviction for failure to stop at the scene of an accident resulting in serious impairment or death is punishable "by imprisonment for not more than 5 years or by a fine of not more than \$5,000.00, or both." MCL 257.617(2). Because defendant is a fourth habitual offender, the statutory maximum is increased to life or any term of years. MCL 769.12(1)(a). Defendant's guidelines scoring for this offense gave him a prior record variable (PRV) score of 75 and an offense variable (OV) score of 20, which resulted in a guidelines sentence range (F II) of 12 to 48 months, due to defendant's habitual offender status. MCL 777.67; MCL 777.21(3)(c). Defendant was sentenced within the guidelines for his offense.

We must affirm a sentence within the guidelines range unless the trial court incorrectly scored the guidelines or relied on inaccurate information in determining the sentence. MCL 769.34(10); *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003). Defendant does not challenge the scoring of the guidelines. Nor does he claim that the trial court relied on inaccurate

information. He also cannot show that the trial court failed to exercise its discretion because of a mistaken belief in the law, which might otherwise entitle him to resentencing. See *Sexton*, 250 Mich App at 228, citing *People v Green*, 205 Mich App 342, 346; 517 NW2d 782 (1994).

Affirmed.

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

/s/ Cynthia Diane Stephens